

Appl. No. : 10/530,071
I.A. Filed : October 4, 2003

REMARKS

Claims 1-9 and 11-18 stand rejected. Applicant has amended Claims 1, 5, 11 and 16-18. Thus, Claims 1-9 and 11-18 are presented for reconsideration and further examination.

Rejection under §35 U.S.C. §103(a) over Magnus (U.S. Patent No.5,558,507)

The Examiner rejected Claims 1-9, 11-13, and 15-18 as being unpatentable over U.S. Patent No. 5,558,507 to Magnus. In order to provide a *prima facie* showing of obviousness under 35 U.S.C. § 103, all the claim limitations must be taught or suggested by the prior art. *See, e.g., In re Royka*, 490 F.2d 981, 180 USPQ. 580 (CCPA 1974).

U.S. Patent No. 5,558,507 to Magnus discloses a hose pump that has multiple stub shafts 8. Each stub shaft includes a recess 9 configured to receive a portion of the adjacent stub shaft 8. The hose pump in Magnus further includes a rotation-securing means to prevent the stub shafts from moving relative to one another. The rotation securing means is either a series of insertion pins 13 and holes 14 or the use of non-cylindrically shaped stub shafts 8. The pump of Magnus with its axle and eccentric discs is highly complicated on account of the large number of individual parts which are fit together.

Claim 1 is directed to a pumping apparatus that includes, for example, “a one-piece shaft comprising a single homogenous piece of material with integral cams.” Independent Claims 5, 11, and 16-18 recite, for example, a “shaft comprising a single homogenous piece of material.” Magnus fails to disclose, teach, or suggest at least the recited structure noted above. Accordingly, Applicant respectfully requests reconsideration of the claims.

The Examiner contends that once the shaft of Magnus is constructed, it is “one-piece” and furthermore, the term “integral” is sufficiently broad to embrace constructions united by such means as fastening and welding. In response, Applicant has amended the claims to include the feature “comprising a single homogenous piece of material.” Applicant submits that Magnus does not disclose a shaft comprising a single homogenous piece of material, and that even after the shaft is constructed, it remains a construction of multiple pieces and is thus not homogenous. *See In re Miskinyar*, 28 U.S.P.Q.2d 1789 (Fed. Cir. 1993).

Accordingly, Applicant respectfully requests that the Examiner withdraw the rejection of independent Claims 1, 5, 11, and 16-18. Dependent Claims 2-4 and 12-15 each depend directly

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or indirectly from one of independent Claims 1 and 11, and thus is patentable for at least the same reasons that support the allowance of the claim from which it depends.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the rejections set forth in the outstanding Office Action are inapplicable to the present claims, and that those claims are in condition for allowance. Accordingly, early issuance of a Notice of Allowance is most earnestly solicited.

Any remarks in support of patentability of one claim should not be imputed to any other claim, even if similar terminology is used. Additionally, any remarks referring to only a portion of a claim should not be understood to base patentability on solely that portion; rather, patentability must rest on each claim taken as a whole.


The undersigned has made a good faith effort to respond to all of the noted rejections and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if an issue requires clarification, the Examiner is respectfully requested to call Applicants' attorney in order to resolve any such issue promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

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By: 
James F. Herkenhoff
Registration No. 51,241
Attorney of Record
Customer No. 20,995
(619) 235-8550